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HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR,)	CASE NO. OSH 2009-43
DEPARTMENT OF LABOR AND)	(Inspection No. 313076960)
INDUSTRIAL RELATIONS,)	
)	STIPULATION AND SETTLEMENT
Complainant,)	AGREEMENT; EXHIBITS A - B;
)	APPROVAL AND ORDER
vs.)	
)	
C & S WHOLESALE GROCERS, INC.,)	
)	
Respondent.)	
)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent C & S WHOLESALE GROCERS, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about May 7, 2009, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 91-315 Hanua Street, Kapolei, Hawaii, 96707.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on November 13, 2009 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$1,100.00. *See Exhibit A.*

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 91-315 Hanua Street, Kapolei, Hawaii, 96707.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. *See Exhibit B.*
5. The violations and corresponding characterizations as stated in the Citation are affirmed. *See Exhibit A.*
6. The Director reduces the aggregate penalty from \$1,100.00 to \$935.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.
7. In consideration of the penalty reduction, Respondent agrees that:
 - a. If an inspection of the battery charging area reveals a damaged or

cut cable that exposes the underlying wire(s) for the battery or recharger, the condition will be immediately reported to the Maintenance section who will immediately lock-out and tag-out the equipment until repairs are completed or the cable is replaced;

b. The areas in and around the battery chargers will be included in one of Respondent's daily inspection logs or checklists to inspect for spills or standing water in the area. Spills or standing water shall be mopped-up in a timely manner.

8. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

9. If Respondent fails to fulfill any condition of this Agreement within the time stated, then, Respondent shall automatically and without further notice be liable for the entire original penalty in the amount of \$ 1,100.00. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

10. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any litigation or purpose other than proceedings under the Hawaii Occupational Safety and Health Law, Chapter 396 of the Hawaii Revised Statutes.

11. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

12. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.


13. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter

396, the Hawaii Occupational Safety and Health Law, or the related rules.

14. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.


DATED: Honolulu, Hawaii, July 13, 2010.


C & S WHOLESALE GROCERS, INC.

By: 
BRYANT GRANGER
C & S WHOLESALE GROCERS, INC.
Vice President of Compliance

APPROVED AS TO FORM:

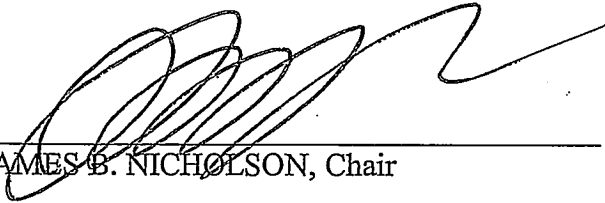
DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS


HERBERT B.K. LAU
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

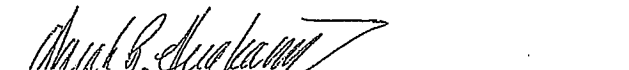

PEARL IMADA IBOSHI

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 399
DATED: July 13, 2010



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

Director v. C & S Wholesale Grocers, Inc.; Case No. OSH 2009-43; Stipulation and Settlement Agreement

aaState of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7006 2150 0004 4122 1454

Citation and Notification of Penalty

To:

C & S Wholesale Grocers Inc
and its successors
91-315 Hanua St
Kapolei, HI 96707

Inspection Number: 313076960 (Karen
Kamihara)
Inspection Date(s): 05/07/2009- 05/19/2009
Issuance Date: 11/13/2009
OSHSO ID: F9171
Optional Report No.: 05109
Inspection Type: Programmed
Scope of Inspection: Comprehensive Inspection

Inspection Site:

91-315 Hanua St
Kapolei, HI 96707

*The violation(s) described in this Citation
and Notification of Penalty is (are) alleged
to have occurred on or about the day(s) the
inspection was made unless otherwise
indicated within the description given below.*

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

C & S Wholesale Grocers Inc
91-315 Hanua St
Kapolei, HI 96707

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 11/13/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313076960

Inspection Dates: 05/07/2009-05/19/2009

Issuance Date: 11/13/2009



Citation and Notification of Penalty

Company Name: C & S Wholesale Grocers Inc
Inspection Site: 91-315 Hanua St, Kapolei, HI 96707

Citation 1 Item 1 Type of Violation: Serious

29 CFR 1910.303(b)(1) [Refer to chapter 12-89.1, HAR] was violated because:

There were three instances of damaged areas of the conductors' outer, insulated jackets for three of the Ferro Five FR Series 36 battery chargers. The damaged conductor jacket areas allowed bare copper wires to be exposed and not insulated, thus exposing employees to an electrical hazard.

29 CFR 1910.303(b)(1) states "Electric equipment shall be free from recognized hazards that are likely to cause death or serious physical harm to employees."

Location: Dry Warehouse Battery Charging Station

Date By Which Violation Must be Abated:

11/17/2009

Penalty:

\$ 1,100.00

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313076960
Inspection Dates: 05/07/2009 - 05/19/2009
Issuance Date: 11/13/2009



Citation and Notification of Penalty

Company Name: C & S Wholesale Grocers Inc
Inspection Site: 91-315 Hanua St, Kapolei, HI 96707

Citation 2 Item 1 Type of Violation: Other

29 CFR 1910.305(a)(2)(x) [Refer to chapter 12-89.1, HAR] was violated because:

There were multiple cracks to the outer jacket of a cigarette stamping iron's electrical cord, thus exposing employees to electrical shock. No bare wires were exposed.

29 CFR 1910.305(a)(2)(x) states "Flexible cords and cables shall be protected from accidental damage, as might be caused, for example, by sharp corners, projections, and doorways or other pinch points."

Location: Second floor mezzanine

Date By Which Violation Must be Abated:	Corrected
Penalty:	\$ 0.00

Citation 2 Item 2 Type of Violation: Other

29 CFR 1910.305(b)(1)(i) [Refer to chapter 12-89.1, HAR] was violated because:

The employees were exposed to electrical hazards from a metal double receptacle whose cover was not securely fastened in place and left a one-half inch opening under the cover.

29 CFR 1910.305(b)(1)(i) states "Conductors entering cutout boxes, cabinets, or fittings shall be protected from abrasion, and openings through which conductors enter shall be effectively closed. Unused openings in cabinets, boxes, and fittings shall be effectively closed."

Location: Warehouse outside break room door

Date By Which Violation Must be Abated:	Corrected
Penalty:	\$ 0.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313076960
Inspection Dates: 05/07/2009-05/19/2009
Issuance Date: 11/13/2009



Citation and Notification of Penalty

Company Name: C & S Wholesale Grocers Inc
Inspection Site: 91-315 Hanua St, Kapolei, HI 96707

Citation 2 Item 3 Type of Violation: Other

29 CFR 1910.305(b)(2)(i) [Refer to chapter 12-89.1, HAR] was violated because:

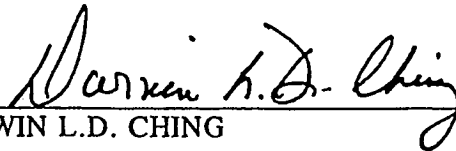
~~A double receptacle was missing a face plate, thus exposing the users to the risk of inadvertent contact with the live parts inside.~~

29 CFR 1910.305(b)(2)(i) states "All pull boxes, junction boxes, and fittings shall be provided with covers identified for the purpose. If metal covers are used, they shall be grounded. In completed installations, each outlet box shall have a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear."

Location: Main copier machine area

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$ 0.00



DARWIN L.D. CHING
Director

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>C. G. Adick</i>	
1. Article Addressed to: 313076960 Mr. Jim Warren Acting General Manager C & S Wholesale Grocers, Inc. 91-315 Hanua Street Kapolei, Hawaii 96707		B. Received by (Printed Name) <i>C. G. Adick</i> C. Date of Delivery NOV 16 2009 D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:	
		3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Safety Postage	\$ 1.25
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.32
Sent To C & S Wholesale Grocers, Inc. Street, Apt. No., or PO Box No. 91-315 Hanua Street City, State, ZIP+4 Kapolei, Hawaii 96707	
PS Form 3800, August 2006 See Reverse for Instructions	

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: C & S Wholesale Grocers Inc
Inspection Site: 91-315 Hanua St, Kapolei, HI 96707
Issuance Date: 11/13/2009

Summary of Penalties for Inspection Number 313076960

Citation 1, Serious	= \$	1,100.00
Citation 2, Other	= \$	0.00
TOTAL PENALTIES	= \$	1,100.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

Abatement Certification

Darwin L.D. Ching, Director
Department of Labor and Industrial Relations
Hawaii Occupation Safety and Health Division
830 Punchbowl Street, Room 425
Honolulu, HI 96813

C&S Wholesale Grocers, Inc.
91-315 Hanua Street
Kapolei, Hawaii 96707

The hazard referenced in Inspection Number 313076960. For the violation identified as Citation 1 and Item 1 was corrected on June 1, 2009.

How corrected: Electrical cables were replaced and electrical shrink tubing installed.

The hazard referenced in Inspection Number 313076960. For the violation identified as Citation 2 and Item 1 was corrected on June 1, 2009.

How corrected: Electrical cable(s) were replaced.

The hazard referenced in Inspection Number 313076960. For the violation identified as Citation 2 and Item 3 was corrected on June 1, 2009.

How corrected: The cover for the double receptacle was re-installed.

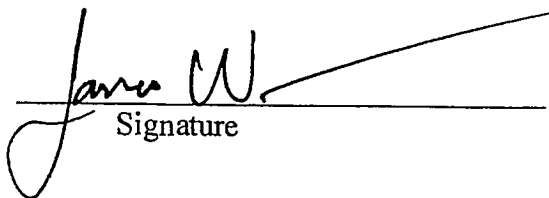
The hazard referenced in Inspection Number _____. For the violation identified as Citation ____ and Item ____ was corrected on _____.

How corrected: _____

The hazard referenced in Inspection Number _____. For the violation identified as Citation ____ and Item ____ was corrected on _____.

How corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their representative have been informed of the abatement activities described in this certifications.


Signature

James Warren, General Manager
Typed or Print Name

EXHIBIT B